

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CIV 6904

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JOEL RIVERA,

Plaintiff,

COMPLAINT

-against-

Civ. No.

THE CITY OF NEW YORK, JOHN DOE POLICE
OFFICERS #1-5,

PLAINTIFF DEMANDS
A TRIAL BY JURY

Defendants.
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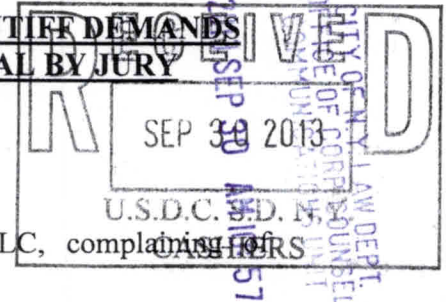
Plaintiff, by his attorneys, GIORDANO LAW OFFICES, PLLC, complains that

Defendants, respectfully alleges upon information and belief:

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to 42 U.S.C. §1983 *et. seq.* for an incident of police misconduct and deprivation of protected rights, including those rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, that transpired on or about October 20, 2012 when police officers employed by the CITY OF NEW YORK wrongfully detained, arrested and falsely imprisoned Plaintiff JOEL RIVERA, a dark skinned Hispanic man, and further maliciously prosecuted Plaintiff in Bronx County, New York.

2. On or about October 20, 2012 at approximately 4:00 p.m., Plaintiff was walking near the intersection of 176th Street and University Avenue, when he noticed that a friend of his, DeShawn Sumpter, was being detained by police officers in front of the library nearby. As Plaintiff walked by the area where Mr. Sumpter was being detained to see if his friend was physically well, Defendant JOHN DOE POLICE OFFICER #1, without probable cause, justification or consent, suddenly grabbed Plaintiff by his left arm and forcefully pulled him to the side of the street.



3. Plaintiff asked Defendant JOHN DOE POLICE OFFICER #1 why he was being stopped, yet Defendant JOHN DOE POLICE OFFICER #1 refused to answer. Instead, the Officer proceeded to perform a full search of Plaintiff.

4. Defendants JOHN DOE POLICE OFFICERS #1-5, without probable cause or justification, unlawfully arrested Plaintiff for Criminal Sale of a Controlled Substance and related charges. Defendants falsely accused Plaintiff of selling narcotics to Mr. Sumpter and unlawfully detained him, despite the fact that there was no evidence of any criminality.

5. As a result of Defendants' actions, Plaintiff's suffered an injury to his left shoulder when he was forcibly grabbed and pulled by the arm by Defendant JOHN DOE POLICE OFFICER #1.

6. Also, as a result of Defendants' actions, Plaintiff was wrongfully imprisoned for almost 24 hours, causing Plaintiff physical and emotional distress, humiliation, and embarrassment.

7. Criminal charges were filed by Defendants against Plaintiff in Bronx County on or about October 21, 2012, Arrest # B12678324, but were ultimately dismissed in Plaintiff's favor on June 12, 2013.

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction pursuant to 28 U.S.C § 1331 in that this action arises under 42 U.S.C. § 1983 *et. seq.*, and the Fourth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 and the doctrine of pendent jurisdiction, since the state claims arise from the same operative facts and are part of the same case or controversy.

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant THE CITY OF NEW YORK resides in this District. Additionally, all Defendants are subject to personal jurisdiction in this District.

10. Prior to the commencement of this action, and within ninety days after the claim arose, Plaintiff caused a Notice of Claim in writing to be served upon the Defendant THE CITY OF NEW YORK, by delivering to and leaving the same with the New York City Comptroller's Office, in like manner as the service of a summons in the District Court, which said Notice of Claim set forth the name and post office address of the Plaintiff and his attorney, the nature of, time when, place where, and manner in which the claims arose, and the items of damage and/or injuries claimed, or that might have been sustained, so far as it was practicable.

11. Over thirty days have elapsed since the service of such Notice of Claim and THE CITY OF NEW YORK has failed to settle or adjust this matter.

12. This action was commenced within one year and ninety days after the cause of action herein accrued.

THE PARTIES

13. At all times relevant hereto, Defendants, acted in their official capacities, and were employees, agents, or servants of the Defendant THE CITY OF NEW YORK, acting under color of state law, within the meaning of 42 U.S.C. § 1983 *et.seq.*

14. THE CITY OF NEW YORK was and is a municipal corporation organized and existing under and pursuant to the laws of the State of New York. At all relevant times, Defendant THE CITY OF NEW YORK acted through its employees, agents and/or servants, including the individually named Defendants herein, who at all relevant times acted within the course and scope of their employment.

15. At all relevant times, Plaintiff is and was a resident of Bronx County, New York.

16. Defendants JOHN DOE POLICE OFFICERS #1-5 are employees acting within the scope of their employment as officers of the New York City Police Department.

AS AND FOR A FIRST CLAIM PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF

AGAINST DEFENDANTS JOHN DOE POLICE OFFICERS #1-5

17. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

18. Defendants JOHN DOE POLICE OFFICERS #1-5, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty of Plaintiff, falsely arrested and imprisoned Plaintiff. Defendants physically and forcibly detained and handcuffed Plaintiff, held him under arrest.

19. As a result of the foregoing, Defendants JOHN DOE POLICE OFFICERS #1-5, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq.*, deprived Plaintiff of rights secured by the Constitution and laws of the United States, including those rights protected by the Fourth and Fourteenth Amendments, his right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

20. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional and psychological pain and was otherwise injured.

21. As a result of the foregoing, Plaintiff JOEL RIVERA demands monetary damages against Defendants JOHN DOE POLICE OFFICERS #1-5 and is further seeking punitive damages against Defendants JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by a jury.

AS AND FOR A SECOND CLAIM PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF
AGAINST DEFENDANTS JOHN DOE POLICE OFFICERS #1-5

22. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if more fully set forth herein.

23. Defendants JOHN DOE POLICE OFFICERS #1-5, acting intentionally, maliciously and without justification or probable cause, caused criminal charges to be filed against Plaintiff for Criminal Possession of a Controlled Substance in the Seventh Degree, Criminal Possession of a Controlled Substance in the Third Degree, and Criminal Sale of a Controlled Substance in the Third Degree. Each of these charges was ultimately dismissed by the Bronx County Criminal Court on or about June 12, 2013.

24. As a result of the foregoing, Defendants JOHN DOE POLICE OFFICERS #1-5, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq.* and deprived Plaintiff of rights secured by the Constitutions and laws of the United States and the State of New York including those rights protected by the Fourth and Fourteenth Amendments, his right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitution of the United States and the State of New York.

25. As a result of the foregoing, Plaintiff JOEL RIVERA was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.

26. As a result of the foregoing, Plaintiff JOEL RIVERA demands monetary damages against Defendants JOHN DOE POLICE OFFICERS #1-5 and is further seeking punitive damages against Defendants JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A THIRD CLAIM PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF

AGAINST DEFENDANTS POLICE OFFICERS #1-5

27. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

28. On or about October 20, 2012 Defendants JOHN DOE POLICE OFFICERS #1-5, acting intentionally, recklessly and/or with a deliberate indifference to the rights, life and liberty of Plaintiff, assaulted, battered and caused physical and mental injuries to Plaintiff.

29. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq*, and deprived Plaintiff of rights secured by the Constitution and laws of the United States and the State of New York including those rights protected by the Fourth and Fourteenth Amendments to the U.S. Constitution, their right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

30. As a result of the foregoing, Plaintiff was caused to suffer bodily injury, loss of liberty, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

AS AND FOR A FOURTH CLAIM OF MALICIOUS PROSECUTION

AGAINST ALL DEFENDANTS

31. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

32. Defendants, acting intentionally, maliciously and without justification or probable cause, caused to be filed an accusatory instrument or otherwise brought criminal charges against

Plaintiff who was criminally prosecuted therefore until such prosecution was terminated in his favor on or about June 12, 2013.

33. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, lost time from his employment and was otherwise injured.

34. As a result of the foregoing, Plaintiff JOEL RIVERA demands monetary damages against all Defendants and is further seeking punitive damages against Defendants JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

**AS AND FOR A FIFTH CLAIM OF NEGLIGENT HIRING AND TRAINING AGAINST
DEFENDANT THE CITY OF NEW YORK**

35. Plaintiff repeats and reiterates each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. The aforementioned occurrence took place by reason of the negligence of Defendant the CITY OF NEW YORK, its agents, servants and/or employees, including various police officers regarding the hiring, retention, supervision and disciplining of the Defendants JOHN DOE POLICE OFFICERS #1-5.

37. As a result of the foregoing, Plaintiff JOEL RIVERA sustained personal injuries and other consequential damages.

38. As a result of the foregoing, Plaintiff demands monetary damages against Defendant THE CITY OF NEW YORK in an amount to be determined by a jury.

WHEREFORE, Plaintiff demands the following relief jointly and severally against all of the Defendants:

- a. Compensatory damages;
- b. Punitive damages against Defendants JOHN DOE POLICE OFFICERS #1-5;
- c. The convening and empaneling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
September 23, 2013

Yours, etc.,

Giordano Law Offices
Attorney for Plaintiff

By: _____

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